

August 31, 2012

Via Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Notice of Oral *Ex Parte* Communications, CG Docket No. 09-158, CC Docket No. 98-170, WC Docket No. 04-36

Dear Ms. Dortch:

On August 29, 2012, the Commission convened with representatives from ISPs, M-Lab, SamKnows, and other organizations to discuss the upcoming Measuring Broadband America (MBA) report.

The Commission's Disclaimer Language is Not Based on Supporting Analysis, and Constitutes an Unfounded Characterization of the Data.

During the meeting, the Commission proposed the following disclaimer language to accompany the March 2012 data and a portion of the April 2012 data. *This disclaimer language is not based on any supporting analysis*, either conducted by the Commission or other attendees. This language constitutes assertion, rather than fact:

IMPORTANT NOTICE: During the course of collecting data for its 2012 Measuring Broadband America July Report, the FCC identified accuracy issues with data test results. These anomalies occurred over periods of time in March and April. These issues distorted test results for a number of panelists across various ISPs participating in the study, and in multiple states. The FCC determined therefore that the data collected during March and from the period from 4/8/12 thru 4/13/12 would not be used in its ongoing Measuring Broadband America reports and will not be considered for any comparative analysis of participating ISPs. While the FCC did extensive audits of the data included in its July 2012 report, it makes no similar assertions for the data released herein and such data is provided solely for research purposes and in accordance with the FCC's policies on openness and transparency.

During March, over the course of a few days, anomalies were detected on a small number of M-Lab servers. The problem was promptly remedied. Following this, M-Lab struggled to gain access to the impacted data for the purpose of thorough analysis, and over the course of months struggled to come to a resolution regarding a disclaimer that accurately reflected the situation, as supported by a detailed analysis.¹

The proposed disclaimer language suffers from several infirmities. First, it is not clear that the detected anomalies in fact caused any accuracy issues. Second, a general statement regarding accuracy issues fails to provide useful information regarding the data. For example, it does not specify the extent of any anomalies, how those anomalies might affect proposed analyses, and how a researcher might adjust for such anomalies in conducting research. A disclaimer that assesses some of those questions and presents answers to them would aid users of the data in their work. It would also preserve the commitment to openness, transparency, and scientific integrity. We encourage the Commission to consider this as policy in the future.

M-Lab Welcomes the Addition of Level 3 Testing Servers

During the meeting, the Commission also announced the addition of a suite of servers, donated by Level 3. This infrastructure will augment the current suite of ISP servers that provide a control group for the overall study. The Commission confirmed that all data to be included in the published report will be collected using the open, research-managed M-Lab platform.

M-Lab welcomes the addition of control servers, which provide a common scientific means to pinpoint anomalies. We also welcome the Commission's suggestion that data collected on these control servers be released publicly to give the research community the benefit of access to this control data. However, M-Lab and the research community it represents *strongly cautions against any inclusion of data collected from ISP-managed servers in an official report.*

The M-Lab platform is designed, instrumented, and managed with the benefit of decades of research experience. It includes at its core the PlanetLab test platform, which sets the standard for research test beds globally, and has been constructed and improved over its history by the active involvement of the network research community globally. The M-Lab platform addresses the nuances, complications, and significant challenges of running a stable research platform at scale. This foundation, and the concomitant involvement and investment of the research

¹ Commission's filing, in which ISP-drafted disclaimer language is first presented <http://apps.fcc.gov/ecfs/comment/view.action?id=6017036985>; M-Lab's filing, pushing back against this language on the basis that it was not based on analysis and data: <http://apps.fcc.gov/ecfs/comment/view.action?id=6017037483>; Commission's filing, in which a second, and still unsubstantiated version of the ISP-drafted disclaimer language is presented: <http://apps.fcc.gov/ecfs/comment/view.action?id=6017093313>; M-Lab's filing, again pushing back against unsubstantiated language: <http://apps.fcc.gov/ecfs/comment/view.action?id=6017093952>.

community, is incredibly difficult to replicate. To provide further technical clarity, we have attached M-Lab's proposal for an open measurement platform, authored by PlanetLab founder Larry Peterson, and others.

We look forward to discussing these and other matters with the collaborative in the future.

Respectfully submitted,

/s/ Thomas Gideon

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